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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

FISCHMANN, BRYAN R

ART UNIT PAPER NUMBER

3618

DATE MAILED: 03/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/779,183

Applicant(s)
ELLINGTON

Examiner
Bryan Fischmann

Art Unit
3618



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 27, 2002
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on Feb 27, 2002 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

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Acknowledgments

1. The Amendment filed 2-27-2002 (paper 4) has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 6, 8-10 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Dykema, et al, US Patent 4,848,781.

Dykema teaches a snowboard for sliding over snow, comprising:

an elongated slide board (16) having a slide surface on a lower surface thereof; and

an elongated step board (24) defining a deck on an upper surface thereof, and attached to an upper surface of the slide board in a substantially parallel and spaced relationship via a connecting member (Figure 6) made of relatively rigid material (see following comments).

Regarding the recitation "a connecting member made of a relatively rigid material" in claims 1 and 10, note that Webster's Collegiate Dictionary defines rigid as: "deficient...of flexibility", "relative" as: "not absolute" and "relatively" as: "to a relative degree or extent, or somewhat". Therefore, the term "relatively rigid" may be understood, or broadly interpreted, to

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mean: “somewhat deficient of flexibility”. The snowboard of Dykema is considered to meet this limitation (“relatively rigid”) due to the following:

(1) Note that the elastic material (26) of Dykema is described as “compression thereof may increase the resistance thereof to bending” on lines 26 and 27 of column 2. This may be at a minimum, be broadly interpreted as “somewhat deficient of flexibility”, as if there was no resistance to flexibility, the elastic member would simply collapse and the slide and step boards would no longer be separated.

(2) The portion of Figure 6 that comprises and screw (35) and nut (38) may be categorized as “relatively rigid”.

Regarding claims 2, 6 and 9 and 13, the connection member is alternately selected to be reference number 50 of Figure 7.

Regarding claims 3 and 14, note that Figure 7 shows the step board appreciably greater length than the slide board. Regarding the width, see figures 6 or 9. Note also that Webster’s Collegiate Dictionary defines “appreciably” as: “capable of being perceived or measured”. The differences in length and width of the slide board and step board are such that they are capable of being perceived and measured.

Regarding claims 8 and 12, note that Webster’s Collegiate Dictionary, 10th Edition defines “tubular” as: “having the form...of a tube”, “tube” as: “any of various usually cylindrical structures or devices” and “cylinder” as: “the surface traced by a straight line moving parallel to a

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fixed straight line and intersecting a fixed planer closed curve". Reference number 26 of Figure 4 teaches a pair of parallel straight lines and Figure 6 teaches a fixed planer closed curve.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 and 5-14 are alternately rejected under 35 U.S.C. 103(a) as being unpatentable over Dodge, US Patent 5,580,077

Dodge teaches a snowboard for sliding over snow, comprising:

an elongated slide board (10) having a slide surface on a lower surface thereof; and

an elongated step board (34) defining a deck on an upper surface thereof, and attached to an upper surface of the slide board in a substantially parallel and spaced relationship via a connecting member (40) made of relatively rigid material.

Dodge fails to teach the material of the connecting member, which is a screw. However, the Examiner takes Official Notice that screws are commonly made out of metal. Metal is a suitable material for a fastener, as it has high strength to resist failure. Metal screws may be found at any local hardware store. Metal screws are relatively rigid.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the connecting member of Dodge is formed of a relatively rigid material.

Regarding claims 2 and 13, the connecting member is located substantially in the middle, as opposed to the ends, of the slide board.

Regarding claim 5, the Examiner takes Official Notice that bindings are commonly used with snowboards. A binding is necessary to hold a boot to a snowboard. Snowboards with bindings may be seen at any establishment selling snowboards.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dykema, et al, US Patent 4,848,781, in view of Tinkler, US Patent 5,544,919.

The snowboard of Dykema fails to teach an engagement portion in the nose part.

However, Tinkler teaches an engagement portion (Figure 1) in the nose of a sportsboard. Although Tinkler illustrates the engagement portion on a skateboard, Tinkler recites on lines 20 and 21 of column 5 "...these concepts are equally applicable with other sportsboards, such as snowboards...". An engagement portion on the nose of a snowboard is advantageous in that it allows a user's foot to remain engaged with the board, while also allowing the user's foot to be located at a part of the board where there is large "leverage" on the board, which facilitates accomplishing stunts and maneuvering.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize an engagement portion on the nose portion of the snowboard of Dykema, as taught by Tinkler.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dykema, et al, US Patent 4,848,781, in view of Laughlin, et al, US Patent 5,915,721.

The snowboard of Dykema fails to teach a binding.

However, snowboard bindings are well known in the art. Laughlin provides a teaching of a snowboard binding. Bindings allow the boots of a snowboarder to be secured to the snowboard, so that the snowboard and the snowboarder do not become separated.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a binding on the stepboard of the snowboard of Dykema, as taught by Laughlin.

8. Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dykema, et al, US Patent 4,848,781.

Dykema does not explicitly state that the connecting member is formed of one of hard plastic and metallic material. Dykema does teach that the connecting member (Figure 6) is formed of an elastomeric material that when compressed resists bending, or pivoting of the board (lines 25-29 of column 3) and a nut (38) and screw (35).

However, claim 7 recites "...connecting members formed of one of hard plastic and metallic material...". Note that Webster's Collegiate Dictionary 10th Edition defines "hard" as:

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“not capable of being spread, very firm”. The elastomeric material of Dykema is consistent with this definition. Regarding the term “plastic”, note that Webster’s Collegiate Dictionary 10th Edition defines “elastomer” as: “any of the various elastic substances resembling rubber; e.g. polyvinyl...” and “polyvinyl” as: “of, relating to, or being a polymerized vinyl compound, resin, or plastic”. From this, it is broadly reasonably interpreted that an “elastomer” may be a “plastic”, or for reasons just noted above, a “hard plastic”.

Also, as noted, Dykema teaches the connecting member also comprises a nut and a screw. Dykema fails to teach the material of the nut and screw. However, the Examiner takes Official Notice that nuts and screws are commonly made out of metal. Metal is a suitable material for a fastener, as it has high strength to resist failure. Metal nuts and screws may be found at any local hardware store.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the connecting members of Dykstra are formed of one of hard plastic material and metallic material.

Regarding the recitation of “plurality of connecting members” in claim 7, note that Figures 4 and 5 and lines 19 and 20 of column 3 of Dykstra teach a plurality of connecting members.

Regarding claim 11, it is unclear whether the screw and nut of Figure 6 would also apply to Figure 7. However, it would have been obvious to one of ordinary skill in the art to utilize the

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screw and nut of Figure 6 to apply a “precompression” to the connecting mechanism of Figure 7 to alter the connecting members characteristics, to suit the preferences of a user.

Response to Applicant's Remarks (paper 4)

9. The Applicant's “remarks” concerning the 35 USC 102 and 103 rejections made on the first Office Action (paper 4) have been considered, but are considered “moot” in view of the amendments to the original claims.

Conclusion

10. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A) Christy - teaches snow rider with two surfaces

B) Dodge - teaches snowboard with two surfaces


12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 7:30 to 4:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson, can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

BF

03/20/02


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3/20/02